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Fifty-third session
Agenda item 22

THE QUESTION OF CONSCIENTIOUS OBJECTION TO MILITARY SERVICE

Letter dated 22 April 1998 from the Permanent Representative of Singapore to the United Nations Office at Geneva addressed to the Chairman of the Commission on Human Rights

1. On behalf of the co-signatories, I transmit* a joint letter on the question of conscientious objection to military service (item 22).

2. We would request that this joint letter be circulated as an official document of the fifty-fourth session of the Commission on Human Rights.

(Signed): SEE CHAK MUN
Ambassador

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* The attachment is circulated as received, in the language of submission only.

Annex

22 April 1998

HE Amb Jacob S Selebi
Chairman, 54th Session
Commission on Human Rights

Dear Amb Selebi

QUESTION OF CONSCIENTIOUS OBJECTION TO MILITARY SERVICE (ITEM 22)

The delegations represented below would like to refer to the draft resolution submitted by Finland regarding conscientious objection to military service under Item 22 contained in document E/CN.4/1998/L.93.

2 National defence is a fundamental sovereign right under international law. Where individual beliefs or actions run counter to such a right, the right of a state to preserve the security of the nation must prevail. Article 29 of the Universal Declaration of Human Rights as well as Article 18 of the International Covenant on Civil and Political Rights recognises that the exercise of the rights and freedoms of the individual is subject to the necessity of ensuring public order and the general welfare of the society.

3 Where a state has established a compulsory military service system under which every citizen is legally required to serve military service, it is then a question of equality before the law. Allowing any group for whatever reasons to be excluded from the compulsory military service would compromise the universality of the application of the law.

4 For the above reasons, we dissociate ourselves from the Finnish draft resolution.

5 We would request that this letter be circulated as an official document of the 54th session of the Commission on Human Rights.

Yours sincerely

(List of co-signatories attached)

22.4.98 (1230)

List of co-signatories

1. Delegation of the People's Republic of China
2. Delegation of the Arab Republic of Egypt
3. Delegation of the Islamic Republic of Iran
4. Delegation of the Hashemite Kingdom of Jordan
5. Delegation of the Republic of Lebanon
6. Delegation of the Union of Myanmar
7. Delegation of Singapore
8. Delegation of the Republic of Sudan
9. Delegation of the Arab Republic of Syria
10. Delegation of Thailand
11. Delegation of the Socialist Republic of Vietnam

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COMMISSION ON HUMAN RIGHTS
Fifty-fourth session
Agenda item 10

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Letter dated 23 April 1998 from the head of the delegation of the United States of America to the fifty-fourth session of the Commission on Human Rights addressed to the Chairman of the Commission on Human Rights

On 15 April 1998, Ambassador George E. Moose of the United States provided the United States Government's oral response to the report by Mr. Bacré Waly Ndiaye, Special Rapporteur on extrajudicial, summary, or arbitrary executions, regarding his mission to the United States of America (E/CN.4/1998/68/Add.3). As Ambassador Moose indicated at that time, we highly value the role of special rapporteurs of the Commission on Human Rights, and it was thus essential for us to provide a detailed response to the report.

I am pleased to provide the attached* response. It will, in our view, provide a more complete and detailed statement of the United States legal process and the protection of the rights of defendants in capital punishment cases. It should be read in conjunction with the Special Rapporteur's report to obtain a fuller and more balanced picture.

It is requested that the response be circulated as a document of the Commission on Human Rights.

(Signed): Nancy RUBIN
Ambassador

* The annex is circulated as received, in the language of submission only.

Annex

U.S. Government Response to the Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions: Mission to the Unites States of America April 23, 1998

The United States has played a prominent role in the establishment and support of the United Nation's special rapporteur system from the outset. This support has extended through all U.S. administrations. We welcome visits by the special rapporteurs and we call on others, such as Cuba and Burma, to do the same. As the UN's Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, Mr. Ndiaye has done an outstanding job in countries such as Bosnia and Rwanda, where he was among the first to report on massive human rights abuses. His efforts can contribute significantly to effective remedies.

We were pleased to welcome Mr. Ndiaye to the United States for a visit this past fall. During his visit, we arranged appointments with Department of State and high-ranking Department of Justice officials, experts on capital punishment, the prison system, and police brutality, to provide the Special Rapporteur with a solid overview of the U.S. system and the relationship of the federal government to the state governments.

We are, however, deeply disappointed with Mr. Ndiaye's report on the United States (E/CN.4/1998/68/Add.3). His report leaves out valuable and extensive information provided to him on the strong and effective procedural protections in the United States against miscarriages of justice. The processes go to the heart of whether the instances of capital punishment are extra-judicial, summary, or arbitrary. By leaving all of this material out, he has produced a most misleading report which does not advance the cause for which such rapporteurs are created, i.e., to help define and advocate the due processes which protect human rights.

Because we value so highly the role of special rapporteurs, we believe that it is essential to provide a detailed response to this report. We ask that Mr. Ndiaye examine carefully the material we are providing and consider revising his report accordingly to make it consistent with the accuracy and purposes that such reports must attain.

We also believe that the Special Rapporteur should devote more of his time to his primary mandate, investigations in those countries where summary, extra-judicial, and arbitrary executions are serious problems. He should spend less time on his secondary mandate of reviewing the establishment of, and adherence to,

international standards for capital punishment, particularly in countries where those international standards of due process are fully protected, as they are in the United States.

Capital punishment is permitted under both U.S. and international law. The U.S. judicial system provides an exhaustive system of protections to ensure that the death penalty is not applied in an extra-judicial, summary, or arbitrary manner. The United States respects the right of other countries to ban the use of the death penalty on their soil and to enter into related treaties and other agreements. The United States is not a party to any of these treaties or agreements.

The report fails to recognize that the Constitution and laws of the United States, as implemented by our state and federal courts, provide rigorous protections for the rights of criminal defendants. Our system of criminal justice is one of the fairest in the world. The American people place a high value on ensuring the fairness and effectiveness of their criminal justice system, including protection against racial bias and discrimination in any form. The issue of capital punishment is openly and vigorously debated by the public and in the various legislatures, and the courts exercise an independent function in ensuring against the excesses of executive authority or popular sentiment.

Also missing from the report is a recognition that the U.S. criminal justice system has in place mechanisms to deal with cases of deaths in police custody. The public nature of those cases indicates that the mechanisms are working by bringing incidents to light and offenders to justice. The Special Rapporteur met, in fact, with Department of Justice officials who work in this area and who provided him with a detailed description of their work. The report should have reflected this information.

Following is a more detailed analysis of these points.

Treaties as Law

Under the U.S. Constitution, duly-ratified treaties are the supreme law of the land, equal with enacted federal statutes. Accordingly, they displace previously adopted federal law and may be displaced by subsequently adopted federal law to the extent of any inconsistency. As federal law, they also prevail over inconsistent state and local law. Where they touch on matters previously within the purview of state and local government (as opposed to the federal government), they may also serve to "federalize" the issue, thus affecting the allocation of authority between the states and the central government.

Historically, the prospect that the constitutional treaty power could be used to override or invalidate state and local law generated considerable domestic political controversy, especially when it concerned individual rights. Although it has been recognized that Congress may act under the treaty power when it might not otherwise have the authority to do so (see Missouri v. Holland, 252 U.S. 416 (1920)), reliance upon that power to legislate changes in state and local law has been considered by some to be an interference with the rights of the constituent states reserved to them under the Constitution. Consequently, the expectation has been that any changes to U.S. law required by treaty ratification will be accomplished in the ordinary legislative process.

Also as a matter of domestic law, treaties as well as statutes must conform to the requirements of the Constitution; no treaty provision will be given effect as U.S. law if it conflicts with the Constitution. Reid v. Covert, 354 U.S. 1 (1957). Thus, the United States is unable to accept a treaty obligation which limits constitutionally protected rights, as in the case of Article 20 of the International Covenant on Civil and Political Rights, which infringes upon the freedom of speech and association guaranteed under the First Amendment to the Constitution.

When elements or clauses of a treaty conflict with the Constitution, it is necessary for the United States to take reservations to those elements or clauses, simply because neither the President nor Congress has the power to override the Constitution. When necessary to carry out its treaty obligations, in cases where there is no conflict with the U.S. Constitution, the United States generally enacts implementing legislation rather than relying on a treaty to be "self-executing." The United States will not deposit its instrument of ratification until the necessary legislation has been enacted.

Because the basic rights and fundamental freedoms guaranteed by the International Covenant on Civil and Political Rights (other than those to which the United States took a reservation) have long been protected as a matter of federal constitutional and statutory law, it was not considered necessary to adopt special implementing legislation to give effect to the Covenant's provisions in domestic law.

At the time of ratification of the International Covenant on Civil and Political Rights, the United States took a number of reservations to the Covenant, including "reserving the right, subject to its Constitutional constraints, to impose capital punishment on any person (other than a pregnant woman) duly convicted under existing or future laws permitting the imposition

of capital punishment, including such punishment for crimes committed by persons below eighteen years of age." This reservation is in line with the classic rules on reservations as provided in the Vienna Convention on the Law of Treaties. Under Article 19(3) of the Vienna Convention, States may make reservations to treaties provided they are not incompatible with the object and purpose of the treaty. The U.S. reservation is consistent with Article 6 of the International Covenant on Civil and Political Rights.

U.S. Form of Government

The Special Rapporteur's report generalizes from the death penalty statutes of the three states the Special Rapporteur visited to the rest of the states which have the death penalty. The generalizations are inappropriate in a country with a republican form of government in which the constituent states maintain an unprecedented measure of autonomy on many issues in a way that is unheard of in many other countries. However, the fact that states have their own criminal justice systems and death penalty statutes, independent of the federal system, does not mean that the use of capital punishment in the United States is arbitrary. Safeguards are in place in all states which have the death penalty to ensure that they meet the standards set by the Supreme Court, standards which meet international standards. Thirty-eight states retain capital punishment (see section on capital punishment below).

The U.S. is a federal republic of fifty states, together with a number of commonwealths, territories, and possessions. The U.S. Constitution is the central instrument of government and the supreme law of the land. Adopted in 1789, the Constitution is the world's oldest written constitution still in force, and owes its staying power to its simplicity and flexibility. Originally designed to provide a framework for government for four million people in thirteen very different former British colonies along the Atlantic coast, its basic provisions were so soundly conceived that, with only twenty-seven amendments, it now serves the needs of some 250 million people in fifty even more diverse states and other constituent units which stretch from the Atlantic to the Pacific Ocean.

Although the Constitution has changed in a number of respects over the years, most of its basic principles remain the same as when they were first adopted:

- The will of the people forms the basis of governmental legitimacy, and the people have the right to change their form of national government by legal means defined in the Constitution itself.

- The three main branches of the federal government (the executive, legislative, and judicial) are separate and distinct from one another. The powers given to each are delicately balanced by the powers of the other two. Each branch serves as a check on potential excesses of the others.

- The Constitution stands above all other laws, executive acts and regulations, including treaties.

- All persons are equal before the law and are equally entitled to its protection. All states are equal, and none can receive special treatment from the federal government. Within the limits of the Constitution, each state must recognize and respect the laws of the others. State governments, like the federal government, must be republican in form, with final authority resting with the people.

- Powers not granted to the federal government are reserved to the states or to the people.

Each state is a sovereign entity, free to promulgate and enforce policy and law that pertains exclusively to that state, limited under the Constitution only to the extent that the relevant authority has been delegated to the federal government. The power of a state and its cities and localities to regulate its own general welfare has traditionally been termed the "police power."

Besides enforcement of criminal laws, the police power encompasses agriculture and conservation, highway and motor vehicle supervision, public safety and correction, professional licensing, regulation of intrastate business and industry, and broad aspects of education, public health, and welfare. The interpretation of a state's constitution falls exclusively within the domain of that state's own court system. Only where there is a direct conflict with the federal law or the federal Constitution, or where the federal government has "preempted" the field, can state law be overridden or invalidated. The retention of most aspects of governmental authority at the state and local level generally serves to keep that authority in the hands of the people.

Distribution of authority between the states and the federal government has historically been among the most basic dynamics of the federal system. Although the powers of Congress are limited, and those powers not expressly delegated to the federal government are reserved to the states or to the people, the 20th century has seen increasingly broad judicial interpretation of the national legislative power. One beneficial result of this

expansion of federal authority, especially in the latter half of this century, has been the increased protection of individual rights and freedoms, especially in the area of civil and political rights, including on capital punishment and cases of police brutality.

Courts of Appeal and District Courts. The second highest level of the federal judiciary is made up of the Courts of Appeals (the highest being, of course, the Supreme Court). The United States is currently divided into twelve appellate circuits, each served by a Court of Appeals. The Courts of Appeals have appellate jurisdiction over decisions of the District Courts (trial courts with federal jurisdiction) within their respective geographic areas. There is a thirteenth Court of Appeals which hears appeals from certain courts with specialized jurisdiction. Approximately 180 judges sit on the various Courts of Appeals.

Below the Courts of Appeals are the federal District Courts. The fifty states are divided into eighty-nine districts so that litigants may have a trial within easy reach. Additionally, there are District Courts in the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, and the territories of Guam and the Virgin Islands. Congress fixes the boundaries of the districts according to population, size, and volume of work. Some states (such as Alaska, Hawaii, Idaho, and Vermont) constitute a district by themselves, while the larger states (such as New York, California, and Texas) have four districts each. In total, there are approximately 650 federal district judges.

Relationship between Federal and States Courts. Over the course of the nation's history, a complex set of relationships between state and federal courts has arisen. Ordinarily, federal courts do not hear cases arising under the laws of individual states. However, some cases over which the federal courts have jurisdiction may also be heard and decided by state courts. Both court systems have exclusive jurisdiction in some areas and concurrent jurisdiction in others.

CAPITAL PUNISHMENT

Law and Practice. The sanction of capital punishment continues to be available under U.S. law for the most egregious crimes. A majority of the states (currently thirty-eight out of fifty), have chosen through their freely elected officials to retain the death penalty. In practice, it is imposed, almost without exception, only for aggravated murder. At the federal level, capital punishment is permitted only for the most serious crimes (such as assassination of a federal official, committing

a terrorist bombing, or masterminding a drug ring). In all cases, the death penalty may be carried out only under laws in effect at the time the crime was committed, subject to the extensive due process and equal protection requirements of the U.S. Constitution, and after exhaustive appeals.

When carried out in accordance with these safeguards, the death penalty does not violate international law. Capital punishment is not prohibited by customary international law or by any treaty to which the United States is currently a party. We recognize that many countries have abolished the death penalty under their domestic laws and that a number, especially within the Council of Europe, have accepted treaty obligations to that effect. We respect their decisions. We believe that in democratic societies the criminal justice system, including the punishments prescribed for the most serious crimes, should reflect the will of the people freely expressed and appropriately implemented by their elected representatives. Within the United States, the issue of capital punishment continues to be freely debated and is the subject of strongly held views. At present, a majority of the constituent states have chosen to retain the option of capital punishment for the most serious crimes.

DISCUSSION. The U.S. Supreme Court has held that the Eighth Amendment to the U.S. Constitution (which proscribes cruel and unusual punishment) does not prohibit capital punishment. Gregg v. Georgia, 428 U.S. 153 (1976) (plurality opinion). However, the death penalty is available for only the most egregious crimes and, because of its severity, warrants unique treatment that other criminal sentences do not require.

Importantly, it cannot be imposed even for serious crimes -- such as rape, kidnapping, or robbery -- unless they result in the death of the victim. Coker v. Georgia, 433 U.S. 584 (1977); Enmund v. Florida, 458 U.S. 782, 797 (1982); Eberheart v. Georgia, 433 U.S. 917 (1977); Hooks v. Georgia, 433 U.S. 917 (1977). Moreover, that the crime resulted in death is not per se sufficient to trigger imposition of capital punishment; it is further required that the crime have attendant "aggravating circumstances." These restrictions upon the imposition of the death penalty arise out of the constitutional requirement that the punishment not be disproportionate to the personal culpability of the wrongdoer, Tison v. Arizona, 481 U.S. 137, 149 (1987), and the severity of the offense, Coker v. Georgia, 433 U.S. 584, 592 (1977) (death penalty is disproportionate punishment for crime of rape).

U.S. law also places special emphasis on due process protection for those accused of capital offenses. The death penalty cannot be carried out unless imposed in a judgment issued

by a competent court and subject to appellate review. Automatic review of the conviction as well as the sentence is mandatory in nearly all of the states whose laws provide for capital punishment. Such review serves to safeguard against the possibility that capital punishment might be imposed capriciously, arbitrarily or disproportionately, i.e., in a manner constituting cruel and unusual punishment. Gregg v. Georgia, 428 U.S. 153 (1976). Typically, review is undertaken regardless of the defendant's wishes and is conducted by the state's highest appellate court. In those few states not providing for automatic review, the defendant can always appeal the sentence, the conviction, or both. If an appellate court vacates the sentence or the conviction, it may remand the case to the trial court for additional proceedings or for retrial.

In 1996 the U.S. Congress passed the Antiterrorism and Effective Death Penalty Act (Public Law 104-132), which introduced a series of improvements to federal criminal procedure, including a partial reform of the federal law governing habeas corpus petitions. The 1996 Act left in place the basic structure of law governing the imposition of capital punishment, setting forth specific circumstances under which federal courts will allow successive appeals of final orders issued in federal and state habeas corpus proceedings, and limiting the period of time within which Federal courts must render final determinations of petitions for habeas corpus brought in capital cases.

Under the U.S. system, a state may not prohibit acts of executive clemency, including amnesty, pardon, and commutation of sentence. Gregg v. Georgia, 428 U.S. 153, 199 (1976). In a recent decision, Herrera v. Collins, 113 S.Ct. 853 (1993), the Supreme Court recognized the availability of executive clemency for persons facing the death penalty whose convictions have been affirmed, whose collateral appeal rights have been exercised and exhausted, and who thereafter present a newly-articulated claim of factual innocence.

In addition to the limitations upon imposition of the death penalty described above, the ex post facto clause of the U.S. Constitution bars retroactive increases in the penalties available in criminal cases. The operation of this clause forbids the government from imposing the death penalty on an offender for a crime that was not subject to capital punishment at the time it was committed.

With respect to international human rights norms, Article 3 of the Universal Declaration of Human Rights states that everyone has the right to life. The United States fully accepts and respects the right to life. That right does not proscribe

capital punishment, however, and most countries practiced capital punishment at the time the Universal Declaration was adopted. In addition, Article 6 of the International Covenant on Civil and Political Rights, to which the United States is a party, expressly recognizes the right of countries that have not abolished the death penalty to impose it for the most serious crimes. A number of countries have chosen to become parties to other treaties obligating them to abolish capital punishment, either entirely or in ordinary circumstances. These treaties, however, neither bind non-parties, such as the United States, nor change the status of capital punishment under customary international law.

Protection against miscarriages of justice due to racial discrimination or bias is a fundamental tenet of the American criminal justice system. The Fifth, Sixth, and Fourteenth Amendments to the Constitution provide strong and effective guarantees in this regard. In particular, the doctrine of equal protection requires that in the administration of justice, no person may be subject to any greater or different punishment than another in similar circumstances, including on the basis of race, color, or national origin. The question of inferring a lack of due process or equal protection from statistical studies alone has been addressed by the courts, in particular in McCleskey v. Kemp, 481 U.S. 279 (1987), and remains a subject of debate and discussion.

JUVENILES. The application of the death penalty to those who commit capital offenses at the age of sixteen or seventeen continues to be subject to open debate in the United States. The laws in a minority of states allow the imposition of capital punishment on persons who were seventeen, and in some cases sixteen, at the time of the crime when our courts find the defendants fit to be tried as adults; this occurs only in the case of the most heinous crimes. The execution of juvenile offenders is extremely rare; the actual execution of persons under age eighteen is even more rare.

Persons who were under sixteen years of age at the time of the crime may not receive capital punishment in the United States, as the U.S. Supreme Court has held that such executions would violate the U.S. Constitution. Thompson v. Oklahoma, 487 U.S. 815 (1988) (no capital punishment of persons fifteen years or younger at the time of the offense); Sanford v. Kentucky, 492 U.S. 361 (1989) (Eighth Amendment does not prohibit imposition of capital punishment on wrongdoer aged sixteen at time of offense).

Customary international law does not prohibit the execution of persons who were sixteen or seventeen at the time of the crime when they are judged competent to be tried as adults. Even if such a legal norm did exist, the United States would not be bound by it as our long-standing practice in this area represents a consistent pattern of dissent. Certain international instruments prohibit "juvenile executions," but these instruments neither bind the United States on this point nor create a new norm of customary international law. Article 37 of the Convention on the Rights of the Child, for example, provides that capital punishment shall not be imposed for offenses committed by persons below eighteen years of age. While the United States signed the Convention in 1995, it has not ratified it and therefore is not bound. Further, the United States has consistently taken reservations to treaty provisions contrary to its capital punishment practice.

MENTAL DISABILITIES. Both Federal and State law provide significant protection against the trial, conviction and punishment of individuals with significant mental infirmities or disabilities. U.S. law prohibits the execution of insane people. In many, but not all, states a defendant cannot be held responsible if he or she reacted to an "irresistible impulse" or is incapable of acting responsibly by reason of mental or emotional disability. Many people with mental disabilities, however, are not legally insane. Some persons with mental disabilities are capable of distinguishing right from wrong, resisting impulses and acting responsibly.

Nevertheless, no one, including persons with mental disabilities, can be forced to stand trial unless they are mentally competent. The standard for judging mental competence varies from jurisdiction to jurisdiction in the United States. In general, a defendant must have known the nature and wrongfulness of the act. Similarly, an individual cannot be executed unless he or she is both aware of the punishment and of the reason why the punishment is to be imposed.

The legal standard for competence, together with the bar on the prosecution of the insane and the other defenses mentioned above, limit significantly the prosecution of persons with mental disabilities. On rare occasions, persons with some degree of mental disability are judged competent to stand trial for a capital offense under U.S. law. The execution of these defendants is very rare, however, because many states regard mental disability as an important mitigating factor to be considered during sentencing.

The protections afforded persons with mental disability under U.S. law relating to capital punishment are consistent with international law. Though the standard used by some countries to judge the competency of defendants to stand trial for a capital crime may differ from the standards employed by some states in the United States, the standards are not a part of customary international law. This is an area where countries may disagree, allowing their citizens to decide the appropriate standard through the democratic process. Even if a single legal norm existed that differed from U.S. law, the United States would not be bound by it because our practice in this area reflects a consistent pattern of dissent. Any international instruments purporting to establish an international standard by which to judge mental competency for execution neither bind the United States on this point nor create a new norm of customary international law. In its ratification of the International Covenant on Civil and Political Rights, for example, the United States reserved the right to impose capital punishment in a manner consistent with the U.S. Constitution, including in the manner described above.

POLICE BRUTALITY. The Criminal Section of the Department of Justice's Civil Rights Division is staffed by attorneys who frequently prosecute cases of national significance involving deprivation of personal liberties which either cannot be, or are not, sufficiently addressed by state or local authorities. These are invariably matters of intense public interest involving acts of racial or religious violence, misconduct by local and federal law enforcement officials, or violations of the peonage and involuntary servitude statutes that protect migrant workers and others held in bondage.

The federal criminal civil rights statutes provide for prosecutions of conspiracies to interfere with federally protected rights, deprivation of rights under color of law, the use or threat of force to injure or intimidate someone in their enjoyment of specific rights (such as voting, employment, education, public facilities, and accommodations), criminal housing interference, and interference with persons seeking to obtain or provide reproductive health services.

The Section receives between eight and ten thousand criminal civil rights complaints annually in the form of citizen correspondence, telephone calls, or personal visits to the Department of Justice, to the local U.S. Attorney's office or, most commonly, to the Federal Bureau of Investigation. Upon conclusion of the investigation, the FBI forwards a report to the responsible attorney within the Division as well as to the appropriate U.S. Attorney's office. A prosecutive determination is then made by Section attorneys based on the facts contained in the FBI report.

Of the approximately 3,000 investigations conducted each year, about seventy are authorized for grand jury presentation. About sixty percent of these presentations ultimately result in charges being filed. Because almost any matter which presents a violation of federal law is also a matter involving a local or state law violation, deference is given to local prosecutions unless federal interests are deemed to be unvindicated. But if the results of the state or local proceedings are insufficient, or in the absence of any such action, a federal prosecution can be brought.

Allegations of official misconduct constitute the majority of all complaints reviewed by the Section. The officials who have been defendants include police officers, federal law enforcement officers, correctional officers, and a county judge. These officials have been charged with using their positions to deprive individuals of constitutional rights, such as the right to be free from unwarranted assaults, illegal arrests and searches, and the right to be free from deprivation of property without due process of law.

In 1995, at the Attorney General's direction, the Civil Rights Division launched an initiative on police misconduct. The initiative's goal is to establish and implement a comprehensive approach to combat and prevent law enforcement misconduct, through deterrence, effective training, and prevention. To achieve this goal, we have undertaken efforts to improve coordination between our criminal and civil enforcement efforts, and between the different modes of civil enforcement. This effort is ongoing, resulting in a 1997 suit against one U.S. city and its police department. In addition, the Division has filed suit against another city and its law enforcement officers and several juvenile justice facilities. The Division is also working to prevent police misconduct by encouraging law enforcement agencies to develop and implement management practices that optimize integrity within the force.

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Fifty-fourth session
Agenda item 3

ORGANIZATION OF THE WORK OF THE SESSION

Note by the Secretariat

Further to a letter dated 20 April 1998 sent by Mr. Dembri, Ambassador of Algeria, to the Chairman of the Commission on Human Rights regarding an incident which took place on 15 April, the Secretariat of the Commission received information from the International Human Rights League relating to the said incident. The information is contained in the attached documents* and the League has requested that they should be distributed as official documents of the fifty-fourth session of the Commission.

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* The attached documents are reproduced as they were received, in the original language only.

Annex

Paris, le 22 avril 1998

Monsieur le Président,

La FIDH, qui a pris connaissance de la lettre que vous a adressé Monsieur l'Ambassadeur d'Algérie le 20 avril 1998, souhaite vous faire part de son indignation quant au contenu de cette lettre et de sa stupéfaction de voir celle-ci circulée en tant que document officiel de la Commission (E/CN.4/1998/170).

En effet, la FIDH conteste avec vigueur la présentation erronée des faits opérée par Monsieur l'Ambassadeur DEMBRI dans cette lettre.

S'il ne fait aucun doute que l'interpellation dont a été victime Monsieur l'Ambassadeur doive être condamnée, il est également indispensable de distinguer entre les auteurs de cet incident et le délégué de la FIDH, avec lequel Monsieur l'Ambassadeur était entrain de discuter, et qui a été tout autant que lui victime de cette interruption.

Vous trouverez à cet égard copie de la lettre envoyée par la FIDH à Monsieur l'Ambassadeur le 17 avril dernier aux fins de clarification, et adressée pour information à Monsieur PETROVSKY, Directeur Général de l'Office des Nations-Unies à Genève.

L'envoi de notre lettre du 17 avril nous permettait de penser que l'incident serait clos pour ce qui concerne la FIDH. Nous sommes donc d'autant plus surpris de découvrir que, quatre jours après réception de notre lettre de clarification, Monsieur l'Ambassadeur d'Algérie persiste à vouloir entretenir la confusion.

A cet égard, la FIDH est stupéfaite de constater qu'il a été décidé de donner une suite positive à la demande de Monsieur l'Ambassadeur de circuler cette lettre comme document de session.

Il apparaît en effet que cette lettre porte sur des faits non établis - au sujet desquels une enquête des services de sécurité de l'ONU est en cours - et dont la version qui en est donnée par Monsieur l'Ambassadeur d'Algérie est contestée, ainsi qu'en atteste la lettre que lui adressée le 17 avril la FIDH.

En outre, force est de constater que la circulation de telles accusations, alors même que la FIDH n'a en principe pas la possibilité d'assurer sa défense par des moyens identiques - puisque les ONG ont seulement la possibilité de présenter des interventions écrites et que le délai de soumission de telles interventions est dépassé depuis longtemps -, relève d'une procédure bien peu équitable.

Enfin, on ne peut que s'interroger sur le rapport existant entre l'objet de cette lettre et le point 3 de l'ordre du jour, qui porte sur l'organisation des travaux de la session, alors que les faits allégués sont intervenus en marge de la session.

Pour l'ensemble de ces raisons, la FIDH aurait apprécié pouvoir pour le moins être entendue, avant que la décision ne soit prise de distribuer cette lettre comme document officiel. C'est en tout cas ce qu'elle imaginait qu'une ONG, dôtée, comme elle, du statut consultatif depuis plusieurs dizaines d'années, et qui n'a pas ménagé ses efforts pour soutenir la Commission et les autres organes compétents des Nations-Unies dans leurs activités, pouvait légitimement attendre.

En tout état de cause, et pour satisfaire aux exigences de l'équité et de l'objectivité, la FIDH vous demande d'autoriser que la présente lettre soit elle-même distribuée comme document officiel de la session au titre du point 3 de l'ordre du jour, et reçoive la même distribution que la lettre de Monsieur l'Ambassadeur DEMBRI.

Nous vous demandons en outre de bien vouloir transmettre dès cet après-midi copie de la présente aux membres du Bureau de la Commission aux fins de transmission au sein des cinq groupes régionaux.

Sachant pouvoir compter sur votre compréhension et votre sens de la justice, nous nous tenons à votre disposition et vous prions d'agréer, Monsieur le Président, l'expression de notre haute et amicale considération.

Patrick BAUDOUIN
Président

Appendix

Paris, le 17 avril 1998

Monsieur l'Ambassadeur,

Nous avons appris que, le 15 avril 1998, alors même que vous commenciez à discuter avec Monsieur KEBAÏLI, accrédité par la FIDH, du cas de son frère disparu en Algérie, vous aviez été victime d'invectives semble-t-il véhémentes au sortir de la salle XVIII de la part de deux opposants algériens.

La FIDH, qui a pour sa part toujours démontré le respect le plus scrupuleux pour les règles régissant l'activité des ONG au sein des Nations-Unies, condamne avec la plus grande vigueur le comportement de ces deux personnes.

Il nous appartient en revanche d'attirer votre attention sur le fait que Monsieur KEBAÏLI n'est aucunement un militant politique. Il s'agit en l'occurence du frère d'une personne disparue voilà trois ans, lors de l'enlèvement de quinze personnes à Ras-El-Oued, et dont est saisi le Groupe de travail sur les disparitions forcées de la Commission des droits de l'Homme.

Comme vous devez le savoir, cette personne se borne à demander, avec la FIDH et d'autres ONG internationales, que la vérité soit faite sur cet événement, et doit supporter avec difficulté le fardeau de la disparition de son frère, reconnue par les autorités mais non résolue.

La FIDH, qui est bien connue pour encourager la coopération et le dialogue entre ONG et gouvernements, déplore qu'une confusion soit intervenue entre la démarche de Monsieur KEBAÏLI, qui ne visait qu'à vous entretenir du cas de son frère, et le comportement inacceptable des auteurs de cet incident regrettable.

Je me tiens à votre disposition si vous souhaitez davantage de précisions.

Veuillez agréer, Monsieur l'Ambassadeur, l'expression de ma haute considération.

Patrick BAUDOUIN
Président

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Fifty-fourth session
Agenda item 8

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Letter dated 22 April 1998 from the Permanent Representative of Switzerland to the International Organizations in Geneva addressed to the Chairman of the fifty-fourth session of the Commission on Human Rights

I have the honour to refer to the report of the Special Rapporteur on the independence of judges and lawyers (E/CN.4/1998/39).

I enclose the reply of my Government* and I should be grateful if you would have it circulated as an official document of the Commission on Human Rights.

(Signed): Walter B. GYGER
Ambassador,
Permanent Representative

* The annex is reproduced as received, in the language of submission only.

ANNEX

Réponse de le Suisse à la recommandation du Rapporteur spécial sur l'indépendance des juges et des avocats, contenu dans son rapport à la Commission des droits de l'homme (E/CN.4/1998/39)

Les autorités fédérales suisses ont pris connaissance de la prise de position et du rapport du rapporteur spécial sur la question de l'indépendance des juges et des avocats, M. Param Cumaraswamy. Ce rapport mentionne le cas de M. Clement Nwanko qui a été arrêté par la police genevoise l'année dernière, au cours de la session de la Commission des droits de l'homme, a subi des mauvais traitements durant sa détention et a été condamné pour vol. Le rapporteur spécial recommande d'offrir à M. Nwankwo une indemnisation adéquate, afin d'éviter ainsi une longue procédure civile et les frais qui en résultent. Le rapport de M. Param Camaraswamy a été transmis aux autorités cantonales genevoises concernées en les priant d'examiner cette recommandation.

M. Nwankwo a fait recours, l'année passée, devant les tribunaux cantonaux genevois. L'instance d'appel a infirmé, le 20 juin 1997, le jugement le déclarant coupable de vol, mais a constaté qu'il avait enfreint le code pénal en résistant à l'arrestation et que les mesures prises lors de son arrestation par la police étaient proportionnées. M. Nwankwo a introduit un recours à ce sujet devant le Tribunal fédéral, qui vient d'être rejeté.

S'agissant cependant du traitement subi dans le commissariat de police, l'enquête administrative menée a conclu qu'il n'était pas conforme aux règles de déontologie de la police. Des excuses ont été formulées par le Chef du Département de justice et police et des transports du Canton de Genève et une procédure disciplinaire interne est en cours. En outre, la décision du Tribunal fédéral mettant fin à la procédure judiciaire au sujet de M. Nwankwo, les autorités genevoises pourront examiner dans les meilleurs délais la question d'une indemnisation.

Genève, le 22 avril 1998